

- VI. Claims 9-15 and 17-18, drawn to methods for the fermentative preparation of L-amino acids using metZ;
- VII. Claims 19-30, drawn to methods for preparing L-methionine-containing animal feedstuffs additive;
- VIII. Claims 31-32, drawn to animal feedstuffs additive;
- IX. Claim 33, drawn to process for obtaining RNA, cDNA, or DNA related to metR; and
- X. Claim 33, drawn to process for obtaining RNA, cDNA, or DNA related to metZ.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. M.P.E.P. § 803.

Applicants respectfully traverse the requirement for restriction on the grounds that the Office has not provided adequate reasons and/or examples to support a conclusion of patentable distinctness between the identified groups. In addition, Applicants respectfully submit that a search of all the claims would not present an unreasonable burden.

The Office states that the inventions of Groups I and II "encode proteins which each have distinct functional properties" or "encode properties having distinct structural properties". Applicants respectfully submit that the Office has merely made conclusory statements without adequate supporting evidence that the nucleic acids, and encoded proteins of the inventions of Groups I and II are, in fact, "distinct" under the criteria set forth in M.P.E.P. § 802.01. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

Likewise, the Office states that the inventions of Groups III and IV are "distinct from each other for the reasons noted above for Groups I and II." As discussed above, Applicants

respectfully submit that the Office has merely made a conclusory statement, and has failed to provide adequate reasons and/or examples under the criteria set forth in M.P.E.P. § 802.01, in support of this allegation. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups V and VI, and the inventions of Groups IX and X are "distinct from each other for the reasons noted above for Groups I and II." As discussed above, Applicants respectfully submit that the Office has merely made conclusory statements, and has failed to provide adequate reasons and/or examples under the criteria set forth in M.P.E.P. § 802.01 in support of this allegation. Applicants therefore respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups I and II are "wholly distinct" from the inventions of Groups III and IV. Applicants note that "wholly distinct" inventions would reasonably be completely dissimilar. However, Applicants note that the inventions of Groups I-IV are all classified in the same class. Thus the Office has failed to provide adequate reasons and/or examples to explain how the inventions of Groups I and II, which are classified in the same class as the inventions of Groups III and IV can be deemed "wholly distinct". Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that "the products of Groups I and II are not required for the practice of the methods [of Groups V and VI]" and that these groups are "distinct from each other for the reasons noted above for Groups I and II." However, as discussed above, Applicants respectfully submit that the Office has merely made conclusory statements, and has failed to provide adequate reasons and/or examples under the criteria set forth in M.P.E.P.

§ 802.01 in support of these allegations. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups I and II are “patentably distinct from Group VII.” Moreover, the Office alleges that the method of Group VII does “not require the use of the nucleic acid sequences of Groups I and II”. However, the Office has failed to provide adequate reasons and/or examples in support of these allegations. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups I and II are “patentably distinct from Group VIII.” Moreover, the Office alleges that the products of Group VIII “do not require the use of the nucleic acid sequences of Groups I and II for their production”. However, the Office has failed to provide adequate reasons and/or examples in support of these allegations. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office has characterized the inventions of Groups I and II, and Groups IX and X, as related as product and process of use. The Office states that “the metR or metZ nucleic acid sequences can be used for a materially distinct process of using the product, such as in the recombinant expression of encoded protein.” However, there is no evidence of record to show that the claimed products can be used in this manner, or that “the recombinant expression of the encoded protein” is materially different from what is claimed. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office has characterized the inventions of Groups III and IV, and V and VI as related as product and process of use. The Office states that the claimed coryneform cells can be used “in the production of animal feedstuffs additives”. However, there is no evidence of

record to show that the claimed coryneform cells can be used in this manner, as the Office has alleged. In addition, the Office has failed to show that this alleged use "in the production of animal feedstuff additives" is materially different from what is claimed. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups III and IV are "patentably distinct from" Groups VII and VIII. Furthermore, the Office states that the methods of Group VII and the products of Group VIII do not "require the use of coryneform bacteria of Groups III and IV". However, the Office has failed to provide adequate reasons and/or examples in support of these allegations. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups III and IV are "patentably distinct from Groups IX and X" and further that the "attenuated nucleic acid sequences in the coryneform bacteria of Groups III and IV are used in the methods of Groups IX and X." The Office has failed to provide an adequate explanation as to how the inventions of Groups III and IV can be "patentably distinct from" the inventions of Groups IX and X when the Office expressly states that the "nucleic acid sequences in the coryneform bacteria of Groups III and IV are used in the methods of Groups IX and X." Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups V and VI are "distinct from" the inventions of Groups VII, IX and X because "the methods each use distinct method steps with distinct reagents to produce different products." However, the Office has not provided adequate reasons and/or examples to support its allegation that the method steps and reagents are "distinct" and that the products produced thereby are "different". Accordingly, Applicants

respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups V and VI are "patentably distinct from Group VIII" because "the methods [of Groups V and VI] neither use nor produce the products of Group VIII." However, Applicants respectfully submit that the Office has merely stated a conclusion, and has not provided adequate reasons and/examples in support thereof. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Groups VII and VIII are "related as process of making and product made", and that the product of Group VIII can be made by "drying any fermentation broth". However, Applicants respectfully submit that "any fermentation broth" reasonably includes fermentation broths which could not provide the product of Group VIII. Furthermore, there is no evidence of record to show that the product of Group VIII could be made in this manner or that the alleged process of "drying any fermentation broth" is materially different from what is claimed. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Group VII is "patentably distinct from Groups IX and X" because the methods "each use distinct method steps with distinct reagents to produce different products." However, the Office has failed to provide adequate evidence or reasoning to explain how the method steps and reagents are "distinct" and how the product produced thereby is "different". Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

The Office states that the inventions of Group VIII are "unrelated" to the methods of Groups IX and X. However, Applicants note that the M.P.E.P. describes unrelated inventions as, for example, "an article of apparel such as a shoe, and a locomotive bearing", or a

"process of painting a house and process of boring a well." M.P.E.P. § 806.04(A). Thus, unrelated inventions, as defined by the M.P.E.P., are inventions which are directed to *completely* different technical fields, and have no reasonable relationship with each other. The Office has failed to explain how the inventions of Groups VIII are "unrelated" to the inventions of Groups IX and X, as suggested by M.P.E.P. § 806.04(A). Furthermore, the Office states that "the different inventions are in no way proposed as being used together." Applicants have failed to identify any requirement in M.P.E.P. § 806.04 requiring that Applicants must "propose" that the claimed inventions be used together. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and request that it be withdrawn.

Finally, Applicants note that MPEP §821.04 states, "if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." Applicants respectfully submit that should the elected group be found allowable, the non-elected claims should be rejoined.

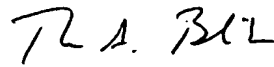
Applicants wish to thank the Examiner for her indication that if the product of Group II is found allowable, the methods of Groups IX and X would be found allowable.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Withdrawal of the requirement for restriction is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully submitted,

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